FOR ARGUMENT No. 90-1126 (8)

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners,

vs.

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DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT

PETITIONERS' REPLY BRIEF TO THE BRIEF OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS AND DAVID BARRERA IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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I

Subsidiary Question Presented For Review

1. The appearance of the Harold Washington Party candidates on the Cook County, Illinois November 6, 1990 general election ballot does not render moot the controversies and issues presented on this Petition for a Writ of Certiorari.

Table of Contents

Statement of The Case Page

There is only one Harold Washington Party - - - 1 - 6

Argument

The controversies and issues are not moot - - - 7 - 17

Table of Authorities Page

Illinois State Board of Election

Illinois Socialist Workers Party,

44 U.S. 173 (1979) - - - - - - - 9, 10, 11, 14

Lubin v. Panish, 415 U.S. 709 (1974) - 9, 14

Moore v. Ogilvie, 394 U.S. 814 (1969)- 9, 14

Statutes

Illinois Election Code, Ch. 46,

Sec. 10-2, Ill. Rev. Statute - - 10, 11, 13

STATEMENT OF THE CASE

THERE IS ONLY ONE HAROLD WASHINGTON PARTY

There is only one Harold Washington Party (HWP). The Respondents' contrary assertions, at pages 2-5, and throughout Respondents' Brief in opposition to the Petition for Certiorari, that there are two Harold Washington Parties, i.e., an "Evans" HWP and a "Pincham" HWP are, (1) deliberate misstatements, (2) without any support whatever in any record in any proceeding before any tribunal below, and are (3) diametrically opposed to the uncontradicted testimony presented to, and the findings of the Cook County Officers Electoral Board (CCOEB). [1]

The following proceedings before the CCOEB affirmatively establish and confirm that these dual HWP assertions by Respondents are clearly false, unsupported in the record and contradict the CCOEB's expressed factual findings.

Respondents, Reed, Sutton, Feichter, Ricks and Barrera, Cook County Democratic Party voters, filed six alleged objections to the HWP nominating petitions to remove the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot. The third objection alleged:

> "that the 'Harold Washington Party' is an established party' in the city of Chicago * * * The (HWP) nomination papers at issue bear the name of an already 'established political party', the 'Harold Washington Party,' and, as such, violate the (Illinois Election Code, Ch. 46) Section 10-5 prohibition against a new political party bearing 'the same name' of an established political party."

During the evidentiary hearing on the objections before the CCOEB, an attorney for the HWP candidates, Petitioners herein, answered this third objection of the Objectors as follows, (tr. pgs. 7-12, 16-17, August 21, 1990). [2]

> "Atty. Thomas: Section 10-5 (Ch. 46, Ill. Rev. Stat.), The Illinois Election Code, which basically says that the prohibition against the use of the same name is not precluded if an established party authorizes the use of that name. And this is exactly what we have here in this situation. We have an established party in the city which seeks to expand its party to run at the county level, and what that established party has done is authorized the use of the name of the established city-wide party to establish it county-wide.
>
> * * *
>
> There was no other provision within the election code that would allow the Harold Washington Party, which is a city-wide party to run a county-

[1] Again, contrary to Respondents' assertions, R. Eugene Pincham is not an official of the HWP. He was invited and requested by the HWP officials and supporters to become a HWP candidate for membership on the Cook County Board in the November 6, 1990 general election, and he accepted.

[2] (tr. pgs. 7-12, 16-17, August 21, 1990) refers to the pages of the certified transcript and the date of the proceedings on the evidentiary hearing of the objections before the CCOEB, which transcript is submitted herewith, as Appendix E.

wide slate.[3] So, therefore, this was the only means that we had in order to expand the party to the county.

In the case of the HWP, in this situation, it is an established party at the city level which is now expanding to run candidates at the county level. THESE ARE THE SAME PEOPLE IN THE HWP WHO RAN A CITY-WIDE SLATE OF CANDIDATES FOR THE MAYOR OF THE CITY OF CHICAGO. THIS IS THE SAME PARTY THAT IS NOW EXPANDING TO RUN A SLATE OF CANDIDATES ON THE COUNTY-WIDE LEVEL. SO THERE IS NOT A CHANGE IN PEOPLE. THERE IS NOT A CHANGE IN NAME. IT IS, IN FACT, THE SAME PARTY . . ." (emphasis added)

Thereupon, extensive colloquy occurred between the CCOEB members and the Objectors' sttorney, (tr. pgs. 16-45, 8/21/90), during which at no time did the Objectors' attorney contend, urge, assert, or argue the dual HWP name contention as a ground or basis for the objections to the HWP nominating petitions. Conversely, the Objectors' attorney then expressly rejected reliance on such grounds, in the following dialogue, (tr. pgs. 25-36, 8/21/90):

"Objectors' Attorney: "If we had those (HWP records) we could tell whether Mr. David Reed, who says in his affidavit that he was authorized to proceed, we'll then be able to find out if that's true.

[3] Certainly the Illinois Democratic-Republican Party legislators cannot validly restrict a competing third party from expanding from the Chicago municipality into Cook County by merely failing to provide by legislation the process or procedure for such expansion by the third party.

BUT I'LL BE CANDID WITH YOU, I DON'T WANT TO GO INTO THAT . . . (emphasis added)

CCOEB member Pucinski: Assuming that there were individuals who authorized this Harold Washington Party to expand and make nominations in the county, your argument is that that authorization still wouldn't be effective . . .

Objectors' Attorney: That's right. It wouldn't make any difference anyway. Wouldn't make any difference anyway."

Alderman Timothy Evans at the request of the CCOEB appeared before the CCOEB on August 24, 1990, at which time he was sworn and CCOEB member Pucinski interrogated him as follows: (tr. pgs. 4-5, 8/24/90:

Ms. Pucinski: "Alderman Evans, * * * YOUR TESTIMONY WILL SETTLE ONE OF THE CENTRAL ISSUES IN THIS WHOLE PROCESS, WHICH IS THE AUTHORIZATION OF THE HAROLD WASHINGTON PARTY BEFORE US TO USE THAT ON THEIR PETITIONS AS THE BASIS FOR THEIR PARTY AND THEIR CANDIDATES. SO THE CENTRAL QUESTION IS, DO YOU AUTHORIZE THE USE OF THE NAME HAROLD WASHINGTON PARTY FOR THIS PURPOSE?

Mr. Evans: YES, I DO AUTHORIZE THE USE OF THE NAME HAROLD WASHINGTON PARTY FOR EXPANSION INTO THE COUNTY.

CCOEB member
Mr. Kusper: So that to try to sum this up, THE CITY OF CHICAGO HAROLD WASHINGTON PARTY DOES GIVE ITS PERMISSION AND AUTHORIZES THE USE OF THE HAROLD WASHINGTON PARTY NAME TO EXPAND IN SUBURBAN COOK?

Mr. Evans: "YES, THAT IS CORRECT." (emphasis added)

Predicated on these foregoing unrebutted representations and testimony, the CCOEB made the following factual findings and decision: Appendix D

> "HE (TIMOTHY EVANS) AUTHORIZED THE HWP CANDIDATES TO USE THE PARTY NAME. The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the new political party in the County, namely the HWP. A QUESTION THAT NEEDED TO BE RESOLVED WAS WHETHER THE NEW HWP WAS ONE AND THE SAME AS THE CHICAGO HWP INVOLVING THE SAME PEOPLE. * * * Evans testified that the County HWP was granted permission by him (as the only candidate of the Chicago HWP) to use the party name as an official branch of the Chicago HWP. Although Evans is not the statutory party chairman he is the only empowered person by the Election Code to act in any official capacity for the HWP.[4]
>
> We find that Evans' testimony was credible and uncontroverted and he is the only person at this point in time, allowed to act as specified above for the Party. Evans testified that he gave permission for use of the name prior to the County HWP petitions being circulated and he is the only person to testify in these regards.
>
> (HERE), THE EVIDENCE DEMONSTRATES THAT IT IS THE SAME HWP WHICH IS REACHING OUT TO EXPAND INTO NEW POLITICAL TERRITORY . . . Thus, the motion (of petitioners) to dismiss the objection that the name Harold Washington Party, could not be used by the candidate is granted." (emphasis added).

[4] The unconstitutionality of the provision of the Illinois Election Code, Ch. 46, Sec. 10-2, Ill. Rev. Stat., which attempts to prescribe and define the authority of a political party leader to manage and operate the party need not here be decided or discussed.

From the foregoing, the conclusion is inescapable that the Respondents' assertions before this Court of a dual HWP, i.e., an Evans HWP and a Pincham HWP, are deliberate misstatements. Whether deliberate misstatements, or whether for purposes of civility Respondents' misstatements are labeled unintentional mistakes, these assertions by Respondents are clearly incorrect, unsupported, but indeed contradicted by the uncontroverted evidence and the CCOEB's findings.

ARGUMENT

THE CONTROVERSIES AND ISSUES PRESENTED IN THE INSTANT PETITION ARE NOT MOOT

Contrary to the Respondents' assertion that "there is no longer any need for the Court to adjudicate Petitioners' ballot access," the controversies and issues presented in the instant petition are not moot. There yet remains a dire and desperate need for this Honorable Court to resolve these issues in a published decision for future authority, directions and guidance, for the following reasons:

First; in a 26 page unpublished decision the CCOEB removed some, and placed other HWP candidates on the November 6, 1990 general election ballot. On appeal, in an order entered October 12, 1990, the four Illinois Supreme Court Democratic Party Justices reversed the CCOEB decision and removed the HWP and all its candidates from said ballot. The three minority Illinois Supreme Court Republican Party Justices dissented in two opinions. The Illinois Supreme Court's majority reversal order, (1) preliminarily states that the order "is entered by a vote of a majority of the Court, WITH AN OPINION TO BE FILED AT A LATER DATE," and (2), in conclusion, the order further states, "AN OPINION WILL LATER BE FILED SETTING FORTH THE REASONS SUPPORTING THIS ORDER." Each of the three Illinois Supreme Court dissenting Justices joined in two dissenting opinions, one of which states: "These two sections of the Code, together,

support the conclusion that the petition before this Court does not violate Section 10-5, a position which I WILL EXPLAIN IN DETAIL IN A DISSENT I WILL WRITE TO THE OPINION THE MAJORITY WILL FILE AT A LATER DATE." (emphasis added).

Up to this very moment of May 14, 1991, the Illinois Supreme Court majority has failed to render an opinion in this case. Several explanations are offered for this unprecedented failure. One explanation is that the Illinois Supreme Court majority has postponed rendition of an opinion pending this Honorable Court's ruling on Respondents' objection to the instant Petition for Certiorari on the ground of mootness. Should this Honorable Court deny the instant Petition for Certiorari on the ground of mootness, or on any other ground, the Illinois Supreme Court majority will then and thereafter be at liberty to render an opinion reversing the CCOEB's decision in whatever language the majority chooses to use, without review thereof by this Honorable Court. The Illinois Supreme Court majority Justices reversed the CCOEB's decision and removed the HWP and its candidates from the ballot. This Honorable Court's Orders of October 23 and 25, 1990, however, did not reverse the Illinois Supreme Court majority Order; rather, this Court merely stayed the Illinois Supreme Court majority rever-

sal Order and reinstated the CCOEB's decision "pending the timely filing and disposition of a petition for a Writ of Certiorari." Under these circumstances, an Illinois Supreme Court majority subsequent opinion, or its October 12, 1990 reversal order removing the HWP and its candidates from the November 6 ballot will be the final published order and authority on the issues and controversies presented in the instant Petition for Certiorari, both of which will be contrary to this Honorable Court's October 23 and 25, 1990 Orders, as well as this Honorable Court's decisions in Illinois State Board of Election v. Socialist Party, 440 U.S. 173 (1979); Lubin v. Panish, 415 U.S. 709 (1974); Moore v. Ogilvie, 394 U.S. 814 (1969), an unprecedented imbroglio.

Another reason proffered for the Illinois Supreme Court majority's unusual neglect in rendering its majority opinion is that no majority opinion can now be written, because two of the Illinois Supreme Court majority Justices, Justices David Ward and John Stamos, who joined in the Court's October 12, 1990 reversal order, are no longer members of Illinois Supreme Court. They retired from the Court on December 6, 1990, without having joined in or ratified a majority opinion. They have been replaced by Justices Michael A. Bilandic and Charles A. Freeman, neither of whom were members of the Court on October 12, 1990 when the Court's majority reversal Order was entered.

Under these circumstances, should this Honorable Court deny the instant Petition for Certiorari for mootness, or on any other ground, the Illinois Supreme Court majority reversal Order of October 12, 1990 will be the final published judicial authority on the instant issues and controversies for future guidance and direction, again, a most undesired and unprecedented dilemma.

Second; the CCOEB held that Ch. 46, Sec. 10-2, the Illinois Election Code required,(1), 25,000 Cook County suburban (excluding Chicago) voters' signatures on the HWP nominating petitions for election to the multiple offices of suburban (excluding Chicago) Cook County Board of Commissioners, (2), another 25,000 Chicago voters' signatures on the HWP nominating petitions for election to the multiple offices of Chicago membership on the Cook County Board of Commissioners, and, (3), but only 25,000 voters' signatures from the entire county, suburban Cook County and/or Chicago, on the HWP nominating petitions for election to the singular Cook County wide offices of State's Attorney, Clerk, Treasurer, Assessor, County Board President and Sheriff. The CCOEB further held that these varying 25,000 signature requirements did not violate the 14th Amendment constitutional equal protection guarantee, or this Court's decision in Illinois State

Board of Election v. Socialist Workers Party, 440 U.S. 173, (1979). The four majority Illinois Supreme Court Justices agreed with these CCOEB holdings. The three dissenting Illinois Supreme Court Justices disagreed, stating:

> "As to the provisions of the Election Code concerning the required number of signatures on a new party's petition, here again the majority of this Court adopted a narrow and strict construction of the language of Section 10-2. In fact, the provisions of Section 10-2 are contradictory in this regard and the majority chose to adopt the language that would rule the HWP candidates from suburban Cook County off the ballot instead of the language of that section which would have permitted them to remain on the ballot.
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> * * *
>
> A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures.
>
> * * *
>
> In light of the holding in Socialist Workers Party, it is incumbent upon this Court to avoid a narrow and strict construction of the Election Code, which denied the HWP candidates access to the ballot."

Further disagreeing with the 25,000 suburban and the 25,000 Chicago voters' signature requirements proclaimed by the Illinois Supreme Court majority, the Illinois Supreme Court dissenting minority stated:

> "The majority's result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Election v. Socialist Workers Party (1979) 440 U.S. 173, which invalidated, on constitutional ground, an earlier provision in Section 10-2 (Ch. 46, the Ill. Election Code) that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide."

The Illinois Supreme Court dissenting Justices in the case at bar, in addition, aptly pointed out:

> "After today's decision (by the four majority Justices), it is not clear how a new party may go about expanding from one district to another."

A difinitive published decision by this Honorable Court resolving these controversies and issues is sorely needed for future guidance and direction.

Third; the CCOEB held that the absence of the 25,000 suburban voters' signatures on the HWP nominating petitions for suburban Cook County Board members did not require removal of the HWP and all its other candidates from the November 6, 1990 ballot. The four majority Illinois Supreme Court Justices disagreed and held that because the HWP petitions failed to contain 25,000 suburban voters' signatures for the suburban Cook County Board members, all the other HWP candidates for all the other County offices and the HWP must be removed from the ballot. The three minority dissenting Illinois Supreme Court Justices however agreed with this CCOEB ruling, stating:

> "This Court should construe the Election Code liberally in favor of permitting the HWP access to the ballot. * * *
>
> In sum, since we are dealing here with fundamental rights, I believe it is incumbent upon this Court to adopt the construction of the Election Code which will afford the HWP

candidates access to the ballot.

* * *

> (T)here are several narrow alternatives to the majority's interpretation of the provisions of Section 10-2 pertaining to signature requirements. None of those alternatives would compel the harsh result of invalidating the entire ticket for the failure to present a total of 50,000 signatures for the combined components of the Cook County slate."

A definitive published opinion from this Honorable Court on whether the rights guaranteed under the 1st, 14th and 15th Constitutional Amendments permitted removing the invalid suburban Cook County Board candidates from the ballot, as the CCOEB and the Illinois dissenting Justices held, but conversely, prohibited removing all the other valid HWP candidates for the other Cook County offices from the ballot.

Fourth; under the provisions of the Illinois Election Code, Ch. 46, Secs. 10-8 and 10-10.1, Ill. Rev. Statute, the nominee-candidates are the only parties who may appear before the CCOEB on the hearing of the objections to the nominating petitions to remove the nominee-candidates from the ballot, or before any appellate tribunal on the appeal of any CCOEB ruling. Because these election code provisions precluded the appearances or the participation of the HWP and/or the HWP voting supporters in the proceedings before the CCOEB, or on the appeal of

the CCOEB decision before the reviewing Circuit Court of Cook County or the Illinois Supreme Court, to protect their constitutional rights and interest, six (6) HWP voting supporters filed an action under 42 USC Sec. 1983 in the United States District Court for the Northern District of Illinois, the Honorable John Nordberg presiding, to enjoin the removal of the HWP and its nominee-candidates from the November 6, 1990 ballot, entitled Timuel Black, et al. v. Cook County Officers Electoral Board, et al. 90 C 5529. On October 2, 1990, the District Court, in an opinion to be published, dismissed the complaint on the ground that it lacked jurisdiction. However, after ruling that it lacked jurisdiction and that the complaint should be (and was) therefore dismissed, the District Court ironically proceeded further and gratuitously decided "that the (25,000 Cook County suburban voters') signature requirement (on nominating petitions for suburban Cook County Board members) is not unconstitutional as it applies to the separate components which comprise Cook County."

This District Court decision is clearly erroneous, repugnant to and violative of this Court's decisions in Illinois State Board of Election v. Socialist Workers' Party, 440 U.S. 173 (1979); Lubin v. Panish, 415 U.S. 709 (1974); Moore v. Ogilvie, 394 U.S. 814 (1969). The

District Court's laborious convolusions to distinguish these decisions were futile.

This District Court decision was also rendered 10 days before the Illinois Supreme Court's October 12, 1990 majority and dissenting opinions, sought to be reviewed herein, and 23 days prior to this Court's October 25, 1990 order restoring the HWP and its candidates to the November 6, 1990 ballot. Additionally, this District Court's unprecedented decision is diametrically opposed to the dissents of the three dissenting Illinois Supreme Court Justices. This erroneous District Court decision will be a published authoritative final decision on this issue should this Court dismiss the instant Petition for Certiorari as moot, as Respondents' request. Plaintiffs appealed the District Court's decision and dismissal of their complaint to the United States Court of Appeals for the Seventh Circuit, Docket No. 90-3203, Black, et al., Appellants v. CCOEB, Appellees and Reed, et al, Intervening Appellees. The Court of Appeals on Janury 18, 1991 ordered that the appeal be held in abeyance pending this Honorable Court's disposition of the instant Petition for a Writ of Certiorari, for which additional reason, we further urge that the Petition be granted.

Fifth; the Chicago-Cook County Democratic Party

power structure continues to deny the HWP equal treatment under the election laws, which caused the HWP to file an action in the United States District Court for the Northern District of Illinois to compel the Chicago Election Board to appoint HWP election judges, as it had appointed Republican and Democratic Party election judges for the polling places in the April 2, 1991 Chicago mayoral election. This action was entitled, the HWP, et al. vs. the Chicago Board of Election Commissioners, et al., No. 91 C 1727, the Honorable John Nordberg presiding. Even though it was unchallenged that the HWP was the second largest Chicago political party and that city election judges had been appointed for the much smaller Republican Party, the District Court denied relief. An appeal from this denial is now pending in the United States Court of Appeals for the Seventh Circuit, Docket No. 91-1686. The allowance of the Petition for Certiorari in the instant cause and a published decision resolving the issues and controversies herein by this Honorable Court will most assuredly impact on this appeal.

The issues and controversies in the petition at bar indeed are not moot and the bench, bar, political parties and the public desperately desire and need a definitive published opinion from this Court resolving these issues,

as judicialauthority for future guidance and direction.

Respectfully submitted,

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